Circuit Court for Howard County
Case No. 13-K-16-056934

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 470

September Term, 2024

ARTHUR COLEMAN

v.

STATE OF MARYLAND

Graeff,
Berger,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 10, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B)

Appellant Arthur Coleman was charged with human trafficking offenses relating to two minors, A.M. and B.T. Following a 2017 jury trial in the Circuit Court for Howard County, Coleman was convicted of all charged counts and sentenced to a total of 50 years in prison.

Coleman appealed, challenging the sufficiency of the evidence to support one of his convictions and, assuming the evidence was sufficient, arguing that the trial court should not have imposed a separate sentence for that offense. In a reported opinion, we held that the evidence was sufficient and that separate sentences were appropriate. We, therefore, affirmed the trial court's judgments. *See Coleman v. State*, 237 Md. App. 83 (2018).

In 2024, Coleman moved to correct what he claimed was an illegal sentence, based on principles of merger. The trial court denied the motion.

In this, his second appeal, Coleman asserts that the trial court erred in denying his motion to correct an illegal sentence. For the reasons that follow, we find no error on the part of the trial court in denying Coleman's motion. We therefore affirm the judgment of the trial court.

FACTS AND LEGAL PROCEEDINGS

In our previous opinion, we recited the pertinent facts of this matter, as follows:

> According to the evidence adduced at trial, in July of 2016, Howard County Police Detective Kalle James-Wintjen of the Vice and Narcotics Unit, became aware that A.M., a thirteen-year-old female, who had been in the custody of the Howard County Department of Social Services, and had run away, was engaged in prostitution. Detective James-Wintjen searched various social media websites in an attempt to locate A.M., and eventually located a profile that the Detective believed belonged to A.M. on the social media website named, Tagged, as well as postings related to her on

Backpage.com. On July 21, 2017, the Detective, working in an undercover capacity and posing as a young female, used a false Tagged account to contact A.M., claiming that she, like A.M., was also interested in prostitution. The Detective agreed on July 22, 2017 to meet A.M. that night and join her in going to a "party" in Elkridge to engage in prostitution. A.M. arrived at the agreed-upon location in a car driven by Coleman. B.T., a sixteen-year-old female, who was also the subject of a missing child investigation, was also inside the car.

Coleman was arrested and his car searched. Police recovered his phone from the car, and took possession of A.M.'s phone from her. Coleman's phone contained a contact list that identified certain contacts as "clients," and others as "workers." Coleman's contact information for A.M. identified her as "Worker [A.M.]" and included her photograph.

Evidence adduced at trial also showed that Coleman had sent A.M. text messages between July 14, 2016 and July 22, 2016, identifying himself as "the dude that throw[s] parties," asking A.M. if she was "available for [a] party," did she "want to make some money," and would she be willing to participate in a "freak party," which he told her was not for "shy girls" because, as he explained, it was a party in which everyone has sex in one room at the same time. Additional text messages from the same time period revealed that Coleman had promised A.M. that he would "spoil" her, pay for her to have her hair done, give her "all the big moves" to make lots of money, and that he wanted her to be his "little partner" in their prostitution venture.

On July 22, 2016, Coleman also texted A.M. that he was hosting a party that night, according to evidence adduced at trial. He instructed A.M. to bring other "girls" with her to the party and told her that he would pick them up and bring them to the party that night.

The State also introduced into evidence two ads posted on Backpage.com dated July 22, 2016 that had been associated with an e-mail address that was identified with Coleman's cell phone. The postings, titled "Saturday Night Adult Freak Party, Tattoo Party," included A.M.'s photograph, and advertised a party of fifteen girls with a $30.00 entry fee. In his statement to police, which was introduced at trial, Coleman further acknowledged that on July 22, 2016, he had picked up A.M. from Baltimore

> to take her to a party, but he denied that he knew the location of the party or that he was hosting the party.

Coleman, 237 Md. App. at 87-89 (footnotes omitted).

The jury convicted Coleman of all the charged counts: two counts of transporting a minor for the purpose of prostitution; two counts of attempted transport of a minor for the purpose of prostitution; one count of receiving consideration to place a minor in a place with the intent of causing the minor to prostitute; one count of benefitting financially from taking a minor to a hotel for prostitution; and one count of persuading a minor to leave her home or the custody of her parent or guardian for the purpose of prostitution.

The trial court sentenced Coleman to a total term of 50 years in prison: 20 years for each count of transporting a minor for the purpose of prostitution, to be served consecutively; 15 years for receiving consideration to place a minor in a place with the intent of prostitution, to be served concurrently with the first transporting conviction; 20 years in prison for benefitting financially from taking a minor to a hotel for prostitution, to be served concurrently with the first transporting conviction; and 10 years in prison for persuading a minor to leave her home or the custody of her parent or guardian for the purpose of prostitution, to be served consecutively to the first two convictions for transporting. The court merged, for sentencing purposes, each of the two convictions for attempted transport of a minor into each of the transporting of a minor convictions.

Following his direct appeal in which this Court affirmed the sufficiency of the evidence to support his convictions, Coleman moved to correct what he asserted was an illegal sentence. In his motion, he argued, as he does in this second appeal, that under the

required evidence test or the rule of lenity, the two convictions of transporting a minor for the purposes of prostitution should have merged for sentencing purposes. In his view, although involving two minors, the charged offenses arose from the same occurrence and only should have been punished as one crime. In addition, Coleman maintained that his sentence for persuading A.M. to leave her home or the custody of her parent or guardian for the purposes of prostitution should have been set to run concurrently with, rather than consecutively to, the two counts of transporting a minor for the purpose of prostitution because they were "part and parcel of the same crime."

The State responded that a single episode can give rise to multiple charges, depending on the unit of prosecution, which in this matter was the victim. Because there were two victims -- the State concluded -- separate sentences for each conviction were warranted, notwithstanding the rule of lenity, which does not apply when the General Assembly's intention to impose separate sentences is clear and unambiguous.

The trial court denied the motion without a hearing, ruling that the sentence imposed was not illegal.[1] Coleman noted a timely appeal of the court's ruling.

STANDARD OF REVIEW

Maryland Rule 4-345(a) provides that "[t]he court may correct an illegal sentence at any time." As such, "a defendant may attack the sentence by way of direct appeal, or 'collaterally and belatedly' through the trial court, and then on appeal from that denial."

[1] Maryland Rule 4-345(f) requires a hearing to be held before a court *grants* a motion to correct an illegal sentence, but the rule does not require a hearing before the court *denies* such a motion.

Bishop v. State, 218 Md. App. 472, 504 (2014) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)).

An illegal sentence is "limited to those situations in which the illegality inheres in the sentence itself; *i.e.,* there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful." *Chaney,* 397 Md. at 466. The "failure to merge a sentence is considered to be an 'illegal sentence' within the contemplation of the rule." *Pair v. State*, 202 Md. App. 617, 624 (2011). Whether a sentence is illegal under Rule 4-345(a) is a legal question that we review *de novo. Farmer v. State*, 481 Md. 203, 222-23 (2022).

DISCUSSION

I. Merger

Coleman argues that the trial court erred by sentencing him separately for each of the two convictions of transporting a minor for the purposes of prostitution. He maintains that because the transportation of the two minors occurred during a single car ride for the intended purpose of attending the same party, the two sentences should merge under the required evidence test or the rule of lenity. We disagree.

Merging convictions for purposes of sentencing derives from the double jeopardy prohibition of the Fifth Amendment and the common law of Maryland. *Brooks v. State*, 439 Md. 698, 737 (2014). The merger doctrine prohibits multiple punishments for the same offense. *Moore v. State*, 163 Md. App. 305, 314 (2005) (citing *Dixon v. State*, 364

Md. 209, 236 (2001)). When merger is employed, the sentence of one conviction swallows the sentence of another conviction, such that the latter is subsumed within the former, and only one sentence is imposed. *State v. Lancaster,* 332 Md. 385, 392 (1993).

As the Supreme Court of Maryland explained in *Purnell v. State*, 375 Md. 678, 692 (2003), *superseded by statute on other grounds as recognized in Rich v. State*, 205 Md. App. 227, 239 n. 3 (2012)):

> A criminal defendant may raise a double jeopardy challenge, alleging multiple punishment, generally in two different sets of circumstances: those involving two separate statutes embracing the same criminal conduct, and those involving a single statute creating multiple units of prosecution for conduct occurring as a part of the same criminal transaction. In the case *sub judice,* we are confronted with a situation where a single common law offense is alleged to have created multiple units of prosecution for conduct occurring, as the petitioner argues, from the same criminal transaction.
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> This Court has stated:
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> "whether a particular course of conduct constitutes one or more violations of a single statutory offense affects an accused in three distinct, albeit related ways: multiplicity in the indictment or information, multiple convictions for the same offense, and multiple sentences for the same offense. All three turn on the unit of prosecution of the offense and this is ordinarily determined by reference to legislative intent."
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> *Brown v. State,* 311 Md. [426,] 432 [(1988)].

(cleaned up). The Court, in *Brown*, further opined that "[t]he unit of prosecution analysis is applicable to those multiple punishment cases which involve the construction of a single statutory provision." 311 Md. at 432 n.6.

Here, Coleman was charged with two counts of transporting a minor for the purposes of prostitution, one count for each minor he transported. The charged crimes,

rather than comprising violations of two separate statutory provisions, are two violations of the same statutory provision. Therefore, the required evidence test -- the usual test of determining when merger is warranted -- is not applicable under the facts of this matter.[2]

Instead, "[w]e analyze the unit of prosecution when we are faced with multiple punishments deriving from a single statutory provision." *Triggs v. State*, 382 Md. 27, 43 (2004); *see also Handy v. State*, 175 Md. App. 538, 576 (2007) ("'[T]he unit of prosecution reflected in the statute controls whether multiple sentences ultimately may be imposed.'" (quoting *Moore*, 163 Md. App. at 320)). "To do so, we must look to the language of the statute, being mindful that any ambiguity must be resolved in favor of the defendant under the rule of lenity." *U.S. v. Bennafield*, 287 F.3d 320, 323 (4th Cir.2002).

At the time of Coleman's trial, the prohibition against the transportation of a minor for the purposes of prostitution was contained in Md. Code (2002, 2013 Repl. Vol.), § 11-303 of the Criminal Law Article ("CL").[3] That Code section unambiguously made the

[2] As we explained in *Paige v. State*, 222 Md. App. 190, 206-07 (2015):

> In Maryland, we generally use the required evidence test to determine if two offenses constitute the same offense for the purposes of sentencing. In applying the required evidence test, we examine the elements of each offense and determine whether each provision requires proof of a fact which the other does not. If all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter. If offenses merge, separate sentences are generally precluded; instead a sentence may only be imposed for the offense having the additional element or elements.

(cleaned up).

[3] In 2019, the crime of human trafficking was renamed as "sex trafficking" and renumbered as CL § 3-1102 -- *see* Chapter 21, H.B. No. 871 -- but the offense remains essentially the same.

victim, rather than the course of conduct, the unit of prosecution. We need look no further than the plain language of the statute to reach this conclusion.

Pertinent to our discussion, CL § 11-303(a)(1) provided: "A person may not knowingly: (i) take or cause another to be taken to any place for prostitution . . . [or] (iii) persuade, induce, entice, or encourage another to be taken to or be placed in any place for prostitution." The statute did not define specifically the unit of prosecution, but CL § 11-303(b)(1) was, on its face, clear and unambiguous as to the proscribed conduct as it related to a minor, expressly providing that "[a] person may not violate subsection (a) of this section involving ***a victim*** who is ***a minor***." (emphasis added).

From the language of these subsections, it is clear that the General Assembly was focused on the individual victim in the singular, that is, "a minor" who was trafficked as "a victim." The use of "a" in the statute qualifies each reference in the singular. *See Payne v. State*, 243 Md. App. 465, 488 (2019) (Although "the use of 'a' can be interpreted to be all-inclusive, . . . it is clear within the context of this statute, that the use of 'a' . . . qualif[ies] the intended unit of prosecution in the singular."). When the intended unit of prosecution consists of "a victim who is a minor," the individual child victim is the focus of the statute, consistent with the language of CL § 11-303. *Cf. Albrecht v. State*, 105 Md. App. 45, 59-60 (1995) ("With intentional homicide or any intentional crime of violence, the unit of prosecution is so self-evident that the issue seldom, if ever, arises. In *dicta,* however, we did note in *Albrecht v. State*, 97 Md. App. 630, 685-86 n. 4 [(1994)]: With intentional crimes of violence, it is clear that the unit of prosecution is each separate victim. To

explode a bomb on an airplane containing 300 passengers and crew constitutes 300 murders, not one.").

Because it is clear that the applicable statute contemplated separate offenses for each individual victim who was trafficked by the defendant, merger of Coleman's sentences for the convictions relating to each of the two victims was not warranted. Therefore, the trial court did not err in denying his motion to correct an illegal sentence on that ground.

The rule of lenity, which Coleman also invokes, is inapplicable for similar reasons. The rule of lenity is a principle of statutory construction whereby any "'doubt or ambiguity as to whether the legislature intended that there be multiple punishments for the same act or transaction' will be resolved against turning a single transaction into multiple offenses." *Marquardt v. State*, 164 Md. App. 95, 149 (2005) (quoting *Williams v. State*, 323 Md. 312, 321 (1991)), *overruled in part on other grounds by Kazadi v. State*, 467 Md. 1 (2020). The relevant inquiry in determining the applicability of the rule of lenity is "whether the two offenses are of necessity closely intertwined or whether one offense is necessarily the overt act of the other." *Marquardt*, 164 Md. App. at 149-50 (cleaned up).

We have already determined that the General Assembly clearly intended separate crimes and separate punishments relating to each victim of human trafficking. In the absence of any ambiguity in the applicable statute, the rule of lenity does not operate to assist Coleman in his efforts to correct his sentence.

II. Consecutive v. Concurrent Sentences

Coleman also contends that the trial court should have run his ten-year sentence for persuading A.M. to leave her home or the custody of her parent or guardian for the purpose of prostitution concurrently with, rather than consecutively to, the two sentences for transporting a minor for the purpose of prostitution. He claims that the two crimes go together because he could not have transported A.M. for the purpose of prostitution without persuading her to leave her home or the custody of her parent or guardian. Again, we disagree.

The Supreme Court of Maryland has held that a "court has a power to impose whatever sentence it deems fit as long as it does not offend the constitution and is within statutory limits as to maximum and minimum penalties. This judicial power includes the determination of whether a sentence will be consecutive or concurrent, with the same limitations. This Court has long adhered to the position that consecutive sentences are a proper exercise of the trial court's discretion." *Kaylor v. State*, 285 Md. 66, 70 (1979) (cleaned up). The *Kaylor* Court concluded that a trial court may, "in the exercise of [its] discretion, impose consecutive sentences for distinct violations of the law, thus preventing duly convicted offenders from escaping punishment for the commission of their criminal acts." *Id*. at 71.

The trial court, therefore, had broad discretion to impose a consecutive or a concurrent sentence in this case, and we perceive no abuse of that discretion in the imposition of a consecutive sentence, especially since the two crimes Coleman references

do not, as he suggests, necessarily operate together as one continuing crime. It is factually possible for a human trafficker to persuade a child victim to leave her home or the custody of her parents for the purpose of prostitution without transporting her for that purpose, just as it is possible for him to transport the victim for the purpose of prostitution without persuading her to leave her home. We, therefore, affirm the denial of Coleman's motion to correct an illegal sentence.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.